

**CITY OF MOAB RESOLUTION NO. 24-2024**  
**A RESOLUTION APPROVING THE NATIONAL ABILITY CENTER PRE-ANNEXATION**  
**AGREEMENT FOR PROPERTY LOCATED AT 611 CERMAK ROAD, GRAND COUNTY,**  
**UTAH.**

WHEREAS, The following describes the intent and purpose of this resolution:

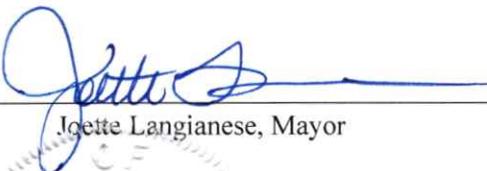
Applicant, the National Ability Center, has requested approval of a Pre-Annexation Agreement for property located at 611 Cermak Road (Parcel No. 03-0036-0065) in Grand County, Utah; and

- a. The Applicant submitted to the City of Moab the appropriate application materials and documents for review and consideration of the Pre-Annexation Agreement; and
- b. The property is approximately 0.50 acres located in Grand County's Rural Residential Zone, and the Applicant desires to annex the property into the City of Moab; and
- c. Upon annexation, the property would be re-zoned to the City's "C-3 Zone" under Moab's zoning ordinances; and
- d. The Applicant also owns approximately 7.42 acres of adjacent property (Parcel No. 01-0036-0040) within the City limits (the "Commercial Property") and desires to re-zone this property from the R-3 and RA-1 Zones to the City's "C-3 Zone"; and
- e. The Applicant intends to construct a mixed-use commercial building on the Commercial Property that will provide accommodations for qualifying participants in the National Ability Center's adaptive recreation and educational programs; and
- f. The proposed uses for the Commercial Property qualify as "Adaptive Recreational Service Provider," which is a permitted use under Section 17.24.020 of the Moab Municipal Code for the C-3 Zone; and
- g. The Moab City Council reviewed the Pre-Annexation Agreement and considered the recommendations in the associated staff report materials; and
- h. Following the consideration of the technical aspects of the pertinent code sections, the Moab City Council hereby finds that the Pre-Annexation Agreement and associated provisions are acceptable;

NOW, THEREFORE, BE IT RESOLVED BY THE MOAB CITY COUNCIL, the National Ability Center Pre-Annexation Agreement is hereby APPROVED.

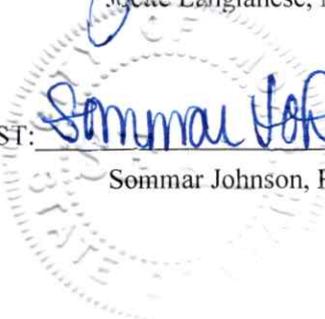
**PASSED AND APPROVED** in open City Council by a majority vote of the Governing Body of Moab City Council on September 24, 2024 .

SIGNED: \_\_\_\_\_

  
Joette Langianese, Mayor

ATTEST: \_\_\_\_\_

  
Sommar Johnson, Recorder





WHEN RECORDED RETURN TO:

City of Moab  
Attn: City Recorder  
217 E Center Street  
Moab, UT 84532

Parcel Nos. 01-0036-0040 and 03-0036-0065

**PRE-ANNEXATION AND RE-ZONING AGREEMENT**

THIS PRE-ANNEXATION AGREEMENT ("**Agreement**") is entered by and among the NATIONAL ABILITY CENTER ("**Property Owner**"), a Utah non-profit corporation, and the CITY OF MOAB, a municipality and political subdivision of the State of Utah (the "**City**"). Property Owner and the City are hereinafter sometimes referred to individually as a "**Party**" or collectively as the "**Parties**" as the context may require.

**RECITALS**

A. Property Owner provides adaptive recreation, adventure, and educational initiatives and programs for people with disabilities.

B. Property Owner owns Parcel No. 03-0036-0065 for approximately 0.50 acres located at approximately 611 Cermak Road (Parcel No. 03-0036-0065) in Grand County, Utah as more fully described in **Exhibit A** (the "**Property**").

C. Property Owner desires to annex the Property into the City.

D. The Property, which is unincorporated and designated as Rural Residential under Grand County's zoning ordinances, would be re-zoned into the City's C-3 Zone upon annexation in the City.

E. Property Owner also owns Parcel No. 01-0036-0040 (the "**Commercial Property**") within the City limits, which is located at 611 Cermak Road and which totals about 7.42 acres of real property as more fully described in Exhibit A.

F. Property Owner desires to re-zone the Commercial Property from the R-3 and RA-1 Zones to the C-3 Zone.

G. Property Owner desires to build a mixed use commercial building on the Commercial Property that will provide "Accommodations for Qualifying Participants", for individuals who participate in Property Owner's Adaptive Recreational Service Provider permitted use initiatives and programs (collectively, the "**Project**").

H. The proposed uses for the Commercial Property qualify as "Adaptive Recreational Service Provider," under the list of permitted uses for the C-3 Zone as found in Section 17.24.020 of the Moab Municipal Code.

I. It is the intent of this Agreement to provide a clear understanding of how the City may annex and zone the Property and how it may re-zone the Commercial Property in accordance with Chapters 1.32, 17.04, and 17.24 of the Moab Municipal Code, UTAH CODE § 10-2-401, *et seq.*, UTAH CODE § 10-9a-101, *et seq.*, and other applicable land use regulations (collectively “**Land Use Regulations**”).

J. The City, acting pursuant to its authority under the Land Use Regulations has made certain determinations with respect to the Property and the Commercial Property, and in the exercise of its legislative discretion, has elected to approve this Agreement in accordance with all necessary and required procedures.

## AGREEMENT

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Incorporation of Recitals.** The recitals and exhibits are hereby incorporated by reference as part of this Pre-Annexation Agreement.
2. **Annexation of the Property.** Utah law encourages development to take place within the boundaries of cities and towns when the land to be developed is located within a city’s annexation declaration area. The Properties are located within the “General Plan annexation area boundary description” identified in the Moab Municipal Code 1.32.030 of the City’s declaration area. See **Exhibit B**.
  - 2.1. **Petition.** Property Owner shall follow the applicable laws, regulations, and ordinances, including but not limited to UTAH CODE § 10-2-401, *et seq.* and Moab Municipal Code Chapter 1.32 and Section 17.72.100(A) (collectively, the “**Annexation Process**”) in seeking annexation of the Properties. Upon receipt of a complete petition that complies with all applicable legal requirements (the “**Petition**”), the City shall complete its review process in accordance with the Annexation Process and this Agreement.
  - 2.2. **Zoning Upon Annexation.** It is agreed that upon the issuance of a Certificate of Annexation by Lieutenant Governor that the Property shall be placed in the “C-3 General Commercial Zone” subject to Chapter 17.24 of the Moab Municipal Code.
3. **Re-Zone of the Commercial Property.** Property Owner shall follow the applicable laws, regulations, and ordinances, including but not limited to UTAH CODE §§ 10-9a-205, 10-9a-501, 10-9a-505 and Moab Municipal Code Chapter 17.04 (collectively, the “**Re-Zone Process**”) in seeking to re-zone the Commercial Property.
  - 3.1. **Application.** Property Owner shall submit a complete re-zone application that complies with all applicable legal requirements, including Section 17.04.040 of the Moab Municipal Code (the “**Application**”), which the City shall process in accordance with the Re-Zone Process and this Agreement.
  - 3.2. **Zoning Change.** If the City approves the Application, it is agreed that the

Commercial Property shall be placed in the "C-3 General Commercial Zone" subject to Chapter 17.24 of the Moab Municipal Code.

4. **Interrelationship Between Petition and Application.** The Parties agree that the Petition and the Application are interrelated and part of the same Project, in which case:

4.1. **Coordination.** To the extent possible, the Parties will coordinate so the Petition and Application are submitted, reviewed, and processed concurrently. To the extent possible, the City Council shall also hold any final public hearings or meetings needed to approve the Petition and the Application at the same time. Nevertheless, the Parties acknowledge that different notice, protest, and review provisions apply to the Petition and the Application and therefore agree that failure by either Party to strictly comply with this subsection shall not constitute grounds for a default.

4.2. **Decision on Petition.** The City shall use all reasonable efforts to either approve or reject the Petition and the Application as soon as reasonably practicable and without undue delay in accordance with the requirements of the Annexation Process and the Re-Zone Process. If reasonable circumstances require additional time (such as Property Owner's failure to provide legally required information, third party protest, or state or local mandated notice provisions), both Parties shall continue to cooperate to expedite the review to the extent the Annexation and Re-Zone Processes allow. Property Owner shall provide at least 14 days written notice of its intent to withdraw the Petition and/or the Application unless the City Council votes to annex or re-zone.

4.3. **Interrelationship.** If the City Council approves the Petition but not the Application, or vice versa, Property Owner shall withdraw the Petition and the Application and this Agreement shall automatically terminate.

5. **Development Requirements.** If the City grants the Petition and the Application, the following shall be express conditions of the Project in addition to any other requirements set forth in applicable law, regulation, and ordinance:

5.1. **Site Plan.** Property Owner shall develop the Project in accordance with the attached site plan attached hereto as **Exhibit C** hereto.

5.2. **Restrictive Covenant Agreement.** Upon completion of the Project and during its operation, Property Owner shall execute a restrictive covenant agreement to be recorded against the Property and the Commercial Property that shall require one hundred (100%) percent of any residential units located on the Property and the Commercial Property (e.g., if the mixed use building is later converted to residential use) to be leased or otherwise made available to (i) "Active Employment Households" ("AEH") as that term is defined in Section 17.06.020 of the Moab Municipal Code or applicable successor ordinance or (ii) to students, faculty, or long-term visitors (more than 30 days) of any institution of higher education that is listed with the U.S. Department of Education eligible to participate in the Title IV federal student aid programs where the person attends the institution from within Grand County ("**Title IV Program**"). The restrictive covenant agreement shall have a term of fifty (50) years and shall be in substantially the same form as set forth **Exhibit D**. If the owner(s) of record of the Property and the Commercial Property provides the City with written evidence showing that a lender has foreclosed upon and acquired the Property and/or the Commercial Property, the City shall execute all documents that may be needed to

terminate the restrictive covenant agreement.

5.3. Sustainability Requirements. The Parties agree that any annexation of the Property or re-zone of the Commercial Property that the City may approve shall be subject to the express condition that the Project apply LEED standards in construction to meet sustainability requirements as attached hereto in **Exhibit E** which shall provide bicycle facilities, electric vehicle charging stations, rainwater management, heat island reduction, light pollution reduction, outdoor water use reduction, indoor water use reduction, dedicated location for recycling containers, and bird safety glass.

## **6. Vested Rights.**

6.1. Vested Rights. Property Owner shall have the vested right to develop the Property and the Commercial Property in accordance with the site plan, the applicable requirements of the “C-3 General Commercial Zone” as set forth in Chapter 17.24 of the Moab Municipal Code, and in accordance with and subject to compliance with the terms and conditions of the City’s Land Use Regulations then in effect.

6.2. Reserved Legislative Powers. The Parties acknowledge that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City those police powers that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation under the police powers, such legislation shall only be applied to modify the vested rights of Property Owner under the terms of this Agreement based upon the policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah. Any such proposed legislative changes affecting the vested rights of Property Owner under this Agreement shall be of general application to all development activity in the City; and, unless the City declares an emergency, Property Owner shall be entitled to prior written notice and an opportunity to be heard with respect to any proposed change and its applicability to the Properties and the Commercial Property under the compelling, countervailing public interest exception to the vested rights doctrine.

## **7. Successors and Assigns.**

7.1. Binding Effect. This Agreement shall be binding upon all successors and assigns of Property Owner in the ownership or development of any portion of the Property and the Commercial Property.

7.2. Assignment. Neither this Agreement nor any of its provisions, terms or conditions may be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Agreement and without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed. Any such request for assignment may be made by letter addressed to the City as provided herein and the prior written consent of the City may also be evidenced by letter from the City to Property Owner or their successors or assigns. Any such assignment shall require the assignee to sign a form of acknowledgement and consent agreeing to be bound by the terms of this Agreement.

**8. Default.**

8.1. Notice. If Property Owner or the City fail to perform their respective obligations hereunder or to comply with the terms hereof, the Party believing that a default has occurred shall provide notice to the other Party as provided herein. If the City believes that the default has been committed by Property Owner, then the City shall also provide a courtesy copy of the notice to Property Owner.

8.2. Contents of the Notice of Default. The Notice of Default shall:

**8.2.1. Claim of Default.** Specify the claimed event of default;

**8.2.2. Identification of Provisions.** Identify with particularity the provisions of any applicable law, rule, regulation, or provision of this Agreement that is claimed to be in default;

**8.2.3. Specify Materiality.** Identify why the default is claimed to be material.

8.3. Meet and Confer. Upon the issuance of a Notice of Default, the Parties shall meet within ten (10) business days and confer in an attempt to resolve the issues that are the subject matter of the Notice of Default.

8.4. Remedies. If, after meeting and conferring, the Parties are not able to resolve the default, then the Parties may have the following remedies:

**8.4.1. Legal Remedies.** The rights and remedies available at law and in equity, including, but not limited to injunctive relief, specific performance, and termination, but not including damages or attorney's fees.

**8.4.2. Enforcement of Security.** The right to draw on any security posted or provided in connection with the development of the Project and relating to remedying the particular default.

**8.4.3. Withholding Further Development Approvals.** The right to withhold all further reviews, approvals, licenses, building permits and/or other permits for development of the Project by Property Owner.

8.5. Public Meeting. Before the City may impose any remedy in this Section, Property Owner shall have the right to attend a public meeting before the Council and address the Council regarding the claimed default.

8.6. Emergency Defaults. Anything in this Agreement notwithstanding, if the Council finds on the record that a default materially impairs a compelling, countervailing interest of the City and that any delays in imposing such a default would also impair a compelling,

countervailing interest of the City then the City may impose the remedies herein without meeting the requirements of this Section . The City shall give Notice to Property Owner and/or any applicable successor or assign of any public meeting at which an emergency default is to be considered and the allegedly defaulting Party shall be allowed to address the Council at that meeting regarding the claimed emergency default.

8.7. Extended Cure Period. If any default cannot be reasonably cured within sixty (60) days then such cure period may be extended as needed, by agreement of the Parties for good cause shown, so long as the defaulting Party is pursuing a cure with reasonable diligence.

9. Cumulative Rights. The rights and remedies set forth herein shall be cumulative.

10. Force Majeure. All time period imposed or permitted pursuant to this Agreement shall automatically be extended and tolled for: (a) period of any and all moratoria imposed by the City or other governmental authorities in any respect that materially affects the development of the Properties and/or the Commercial Property; or (b) by events reasonably beyond the control of Property Owner including, without limitation, inclement weather, war, strikes, unavailability of materials at commercially reasonable prices, and acts of God, but which does not include financial condition of Property Owner or their successors.

11. Notices. Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be sent via email, certified mail (return receipt requested and postage prepaid), or personal service upon the Party for whom intended at the addresses shown below. Notice shall be deemed to be given on the date issued to the following addresses:

National Ability Center  
1000 Ability Way  
Park City, UT 84060  
[insert email address]

City of Moab  
Attn: City Recorder  
217 E Center Street  
Moab, UT 84532  
[sommar@moabcity.org](mailto:sommar@moabcity.org)

Any Party may change its address or notice by giving written notice to the other Parties in accordance with the provisions of this Section.

12. Agreement to Run with the Land. This Agreement shall be recorded in the Office of the Grand City Recorder against the Properties and the Commercial Property and is intended to and shall be deemed to run with the land and shall be binding on all successors in the ownership and development of any portion of the Properties and the Commercial Property.

13. Entire Agreement. This Agreement, together with the exhibits hereto, integrates and constitutes all the terms and conditions pertaining to the subject matter hereof and supersedes all prior negotiations, representations, promises, inducements, or previous agreements between the Parties hereto with respect to the subject matter hereof. Any amendments hereto shall be in writing

and signed by the respective Parties hereto.

14. **Headings.** The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.
15. **Non-Liability of City Officials or Employees.** No officer, representative, agent, or employee of the City shall be personally liable to Property Owner, or any successor-in-interest or assignee of Property Owner, in the event of any default or breach by the City or for any amount which may become due to Property Owner, or its successors or assignees, for any obligation arising out of the terms of this Agreement.
16. **No Third-Party Rights.** The obligations of the Parties set forth in this Agreement shall not create any rights in or obligations to any persons or parties other than to the City and Property Owner. The City and Property Owner alone shall be entitled to enforce or waive any provisions of this Agreement to the extent that such provisions are for their benefit.
17. **Severability.** Should any portion of this Agreement for any reason be declared invalid or unenforceable, the invalidity or unenforceability of such portion shall not affect the validity of any of the remaining portions, and the same shall be deemed in full force and effect as if this Agreement had been executed with the invalid portions eliminated.
18. **No Waiver.** No waiver of any of the provisions of this Agreement shall operate as a waiver of any other provision regardless of any similarity that may exist between such provisions, nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding unless executed in writing by the waiving Party.
19. **Survival.** All agreements, covenants, representations, and warranties contained herein shall survive the execution of this Agreement and shall continue in full force and effect throughout the term of this Agreement.
20. **Public Information.** The Parties understand and agree that all documents related to this Agreement shall be public documents, as provided in UTAH CODE. § 63G-2-101, *et seq.*
21. **Governing Law and Venue.** This Agreement shall be construed in accordance with the laws of the State of Utah, and any actions between the Parties arising out of the relationship contemplated by this Agreement shall be brought in Grand County, Utah.
22. **Counterparts.** This Agreement may be executed in multiple counterparts which shall constitute one and the same document.
23. **Legal Review.** The Parties represent and agree that they had full opportunity to review this Agreement and that they accept the terms hereof. The rule that such Agreement is to be construed against its drafter shall not apply to this Agreement.
24. **Governmental Immunity Act of Utah.** The Parties agree and understand that the City is a governmental entity entitled to the protections and safeguards of the Governmental Immunity Act of Utah, UTAH CODE § 63G-7-101 *et. seq.* Except as may be provided in UTAH CODE § 63G-7-301(1)(a) (i.e., waiver as to the City's contractual obligations under this Agreement), the City neither waives nor relinquishes any applicable provision or protection of that Act.

**25. Interpretation.** In this Agreement, unless the context requires otherwise:

- 25.1. Use of the singular, plural, or a gender shall include the other.
- 25.2. The word “may” is permissive;
- 25.3. The words “shall not” are prohibitive;
- 25.4. The word “shall” is mandatory or required; and
- 25.5. The present tense includes the future tense, unless otherwise specified.

**26. Successor Legislation.** Any statute referred to in this Agreement shall be deemed to include that statute as amended, restated, and/or replaced from time to time, and any successor legislation to the same general intent and effect.

*(Signatures begin on following page)*

**IN WITNESS WHEREOF**, this Agreement has been executed by the Moab City Council as the land use authority for pre-annexation and other land use agreements under Moab City Municipal Code 17.72.100(A), and by a duly authorized representative of Property Owner on this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

**CITY OF MOAB**, a Utah Municipality and political subdivision of the State of Utah.

By: \_\_\_\_\_  
Joette Langianese, Mayor and  
Chair, City Council

ATTEST:

\_\_\_\_\_  
Sommar Johnson, City Clerk/Recorder

**NATIONAL ABILITY CENTER**

By: \_\_\_\_\_  
Willie Ford, CEO

STATE OF UTAH                    )  
  :ss.  
CITY OF SALT LAKE            )

On the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, personally appeared before me Willie Ford, who being duly sworn, did say that they are the CEO of the National Ability Center, and that the foregoing instrument was signed in behalf of said limited liability company and said Willie Ford duly acknowledged to me that they executed the same for the purposes therein stated.

\_\_\_\_\_  
NOTARY PUBLIC

# **EXHIBIT A**

## ***Legal Description***

# **EXHIBIT B**

## ***General Plan Annexation Area Boundary Description***

# EXHIBIT C

## *Site Plan*



# **EXHIBIT D**

## ***Restrictive Covenant Agreement***

WHEN RECORDED RETURN TO:

City of Moab  
Attn: City Recorder  
217 E Center Street  
Moab, UT 84532

Parcel Nos. 01-0036-0040 and 03-0036-0065

**Restrictive Covenant Agreement**

This Restrictive Covenant Agreement (“**Agreement**”) governs the property (the “**Property**”) located at approximately 611 Cermak Road, Moab, Utah, (the “**Property**”), as more particularly described in **Exhibit 1**, and is made and entered into by the NATIONAL ABILITY CENTER (“**Grantor**”), a Utah non-profit corporation, for and on behalf of the CITY OF MOAB, UTAH (“**Grantee**”).

**RECITALS**

WHEREAS, Grantor provides adaptive recreation, adventure, and educational initiatives and programs for people with disabilities.

WHEREAS, Grantor is the record owner of the Property (Parcel Nos. 01-0036-0040 and 03-0036-0065), which Grantor desired to develop as part of a project that would include the operation of and the construction of a new Adaptive Recreational Service Provider permitted use facility (the “**Adaptive Recreational Service Provider Facility**”) that would provide Accommodations for Qualifying Participants who participate in Grantor’s Adaptive Recreational Service Provider initiatives and programs

WHEREAS, Grantor and Grantee executed a Pre-Annexation and Re-Zone Agreement (the “**Land Use Agreement**”) on [REDACTED], 202[REDACTED], that they subsequently recorded against the Property and now appears in the records of the Grand County Recorder as [insert entry number, book number, and page number].

WHEREAS, pursuant to the Land Use Agreement, Grantor filed an annexation petition, which Grantee approved on [insert date], thereby annexing Parcel No. 03-0036-0065 into its city limits as part of its C-3 Zone.

WHEREAS, pursuant to the Land Use Agreement, Grantor filed a request with Grantee to re-zone Parcel No. 01-0036-0040 into Grantee’s C-3 Zone, which Grantee approved on [insert date].

WHEREAS, the Land Use Agreement conditioned Grantee’s approval of Grantor’s annexation and re-zone requests upon Grantor’s execution of a restrictive covenant requiring that one hundred (100%) of any residential units that now exist or that may exist in the future within the Property be leased or otherwise made available to “Active Employment Households,” as that term is defined in Section 17.06.020 of the Moab Municipal Code or applicable successor ordinance.

WHEREAS, Grantor and Grantee desire to execute this Agreement to satisfy the requirements of the Land Use Agreement.

#### COVENANTS AND RESTRICTIONS

NOW, THEREFORE, in consideration of the foregoing recital and the following covenants, Grantor, for and on behalf of Grantee, submits the Property to the following covenants and restrictions:

##### 1. Local Leasing Requirement:

- a. Grantor shall lease or otherwise make available one hundred (100%) of any residential units that currently exist or that may exist on the Property to either (i) Active Employment Households,” as that term is defined in Section 17.06.020 of the Moab Municipal Code or applicable successor ordinance or (ii) to students, faculty, or long-term visitors (more than 30 days) of any institution of higher education that is listed with the U.S. Department of Education eligible to participate in the Title IV federal student aid programs where the person attends the institution from within Grand County. Those units that are leased to Active Employment Households shall be deemed “Active Employment Units.”
- b. The provisions of Section 1.a shall not apply to the Communal Living Facility so long as Grantor uses the facility for lodging and school purposes as authorized under Section 17.24.020 of the Moab Municipal Code. The provisions of Section 1.a shall apply to the Communal Living Facility if the facility is ever converted to any residential use.

2. **Sustainability Requirements and LEED Standards:** Grantor shall comply with the requirements to apply LEED standards in construction to achieve sustainability requirements, as set forth in Exhibit E of the Land Use Agreement, including but not limited to providing bicycle facilities, electric vehicle charging stations, rainwater management, heat island reduction, light pollution reduction, outdoor water use reduction, indoor water use reduction, energy efficient devices and appliances, dedicated location for recycling containers, and bird safety glass.

3. **Prohibition of Nightly or Short-Term Rentals:** Grantor shall strictly adhere to the prohibition of the use of the Active Employment Units as nightly or short-term rentals.

4. **Lease Period of Active Employment Units:** The lease period for an Active Employment Unit shall be a minimum of ninety (90) days.”

5. **Term:** This Agreement shall require a fifty (50) year term of compliance with the restrictive covenants set forth herein. This Agreement shall automatically expire on the completion of the term and shall have no further effect thereafter.

6. **Runs-With-The-Land:** This Agreement shall constitute covenants running with the Property, as defined in the recitals above and the exhibits attached, shall act as a burden thereon, binding every person having a fee, leasehold, or other interest in any portion of the Property at any time or from time to time, and shall inure for the benefit of Grantee for the term set forth herein. This Agreement is enforceable by both Parties through any appropriate legal action, or other remedies

specified in Utah law, including but not limited to specific performance, injunction, reversion, and payment of attorney's fees and costs.

7. **Incorporation of Recitals and Exhibits:** The recitals and all exhibits set forth herein are deemed incorporated into this Agreement, and the Parties represent that they are true and correct.
8. **Entire Agreement:** This Agreement together with the Agreement, including exhibits, constitutes the entire agreement of the Parties and supersedes all prior understandings, representations, or agreements of the Parties regarding the subject matter in this Agreement and the Agreement.
9. **Binding Effect:** This Agreement shall be binding upon the Parties hereto and upon their heirs, successors, administrators, and assigns.
10. **Use of Singular, Plural, and Gender:** Whenever the sense of this Agreement requires, a singular number shall be construed to be plural and vice versa, and words of the masculine gender shall be construed to be feminine and vice versa.
11. **Captions:** The captions of any articles, paragraphs, or sections hereof are made for convenience only and shall not control or affect the meaning or construction of any other provisions hereof.
12. **Applicable Law and Severability:** This Agreement is made in Utah and shall be construed in accordance with the laws of the State of Utah. If any provision of this Agreement is in conflict with any statute or rule of law of Utah, or is otherwise unenforceable, the provision shall be deemed null and void only to the extent of such conflict or unenforceability and shall be deemed separate from and shall not invalidate any other provision of this Agreement.
13. **Amendments:** This Agreement shall not be amended or modified except in writing executed by all the Parties to this Agreement, including any successor in title to the Property or Grantee.
14. **Authority:** All Parties warrant that they are authorized to sign on behalf of and legally bind the entities for which they sign.
15. **Counterparts:** This Agreement may be executed in counterparts, each of which shall be deemed an original as against any Party whose signature appears on the counterpart. This Agreement shall become binding when one or more counterparts, individually or taken together, include the authorized signatures of all the Parties.
16. **Legal Review:** The Parties represent and agree that they had full opportunity to review this Agreement and that they accept the terms hereof. The rule that such agreement is to be construed against its drafter shall not apply to this Agreement.
17. **Costs and Attorney's Fees:** If any Party defaults in the performance of any covenant or condition contained herein, the defaulting Party agrees to pay the costs and expenses, including reasonable attorney's fees, that the non-defaulting Party incurs in enforcing this Agreement through litigation or otherwise.
18. **Governmental Immunity Act of Utah:** The Parties agree and understand that Grantee is a

governmental entity entitled to the protections and safeguards of the Governmental Immunity Act of Utah, UTAH CODE § 63G-7-101 et. seq. Except as may be provided in UTAH CODE § 63G-7-301(1)(a) (i.e., waiver as to Grantee's contractual obligations under this Agreement), the Grantee neither waives nor relinquishes any applicable provision or protection of that Act.

**19. Successor Legislation:** Any statute referred to in this Agreement shall be deemed to include that statute as amended, restated, and/or replaced from time to time, and any successor legislation to the same general intent and effect.

IN WITNESS WHEREOF, Grantor has caused this Agreement to be executed this \_\_\_\_ day of \_\_\_\_\_ 2023.

**National Ability Center**

\_\_\_\_\_  
Willie Ford  
Its CEO

**Acknowledgement**

State of Utah            )  
                                  §  
County of Grand        )

On this \_\_\_\_ day of \_\_\_\_\_ 202\_, Willie Ford, acting in their authorized capacity as the CEO of the National Ability Center, personally appeared before me, whose identity has been proven on the basis of satisfactory evidence, and after being duly sworn acknowledges that they executed the foregoing **Agreement**, for the purposes stated therein, of their own voluntary will and act.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Residing at: \_\_\_\_\_

[notary seal]

IN WITNESS WHEREOF, Grantee has caused this Agreement to be executed this \_\_\_\_ day of \_\_\_\_\_ 2023.

**City of Moab, Utah**

\_\_\_\_\_  
Joette Langianese, Mayor

**Acknowledgement**

State of Utah            )  
                                  §  
County of Grant        )

On this \_\_\_\_ day of \_\_\_\_\_ 202\_, **JOETTE LANGIANESE**, acting in her authorized capacity as Mayor of the City of Moab, Utah, personally appeared before me, whose identity has been proven on the basis of satisfactory evidence, and after being duly sworn acknowledges that she executed the foregoing **Agreement**, for the purposes stated therein, of her own voluntary will and act.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Residing at: \_\_\_\_\_

[notary seal]

**EXHIBIT 1**

***Legal Description for 611 Cermak Road***

# EXHIBIT E

## *Sustainability Requirements in Development Agreements*

Possible goals:

- Significant improvement relative to base codes.
- Aligns with documented City goals.
- Allowed in Utah; and probably won't trigger preemption.
- In as much as possible, model on work done by other communities and organizations, preferably in Utah.
- Reasonable additional cost. If there are significant costs, possibly coupled with other incentives to at least partially mitigate additional costs.
- As possible, anticipate and align with possible future city stretch codes.

### Site requirements

Site/landscape mandates would steer more towards zoning authority, and less towards building codes. These relevant sustainability provisions below are from LEED or similar rating programs:

- **Bicycle Facilities:** Provide at least four short-term bicycle storage spaces per building, and four long-term bicycle storage for regular building occupants. Provide at least one on-site shower with a changing facility for building occupants.
- **Electric Vehicles:**
  - Install Level 2+ charging which meet the connected functionality criteria for ENERGY STAR certified chargers and be capable of responding to time-of-use market signals (e.g. price) in 5% of all parking spaces used by the project or at least two spaces, whichever is greater. Clearly identify and reserve these spaces for the sole use by plug-in electric vehicles.
  - -OR- Make 10% of parking spaces or at least 6 spaces, whichever is greater, EV Ready. To be EV Ready, include a dedicated electrical circuit with sufficient capacity for each required space. Each circuit shall have conduit and wire sufficient to provide Level 2 charging or greater, and shall end at an electrical box or enclosure located near each required space.
- **Rainwater Management:** Low impact development stormwater provisions (i.e. on-site green infrastructure), as in the large scale commercial development section of MMC (but probably with review and edits). Rather than a single detention basin, utilize distributed landscaped areas to receive and use stormwater.
- **Heat Island Reduction:**
  - Similar to current requirement of 50% mature tree cover in some parking, but sets a higher site-wide standard that can be met by a variety of strategies.
  - Use high reflectance roofing materials that have an SRI equal to or greater than the

values in Table 1. Meet the three-year aged SRI value. If three-year aged value information is not available, use materials that meet the initial SRI value.

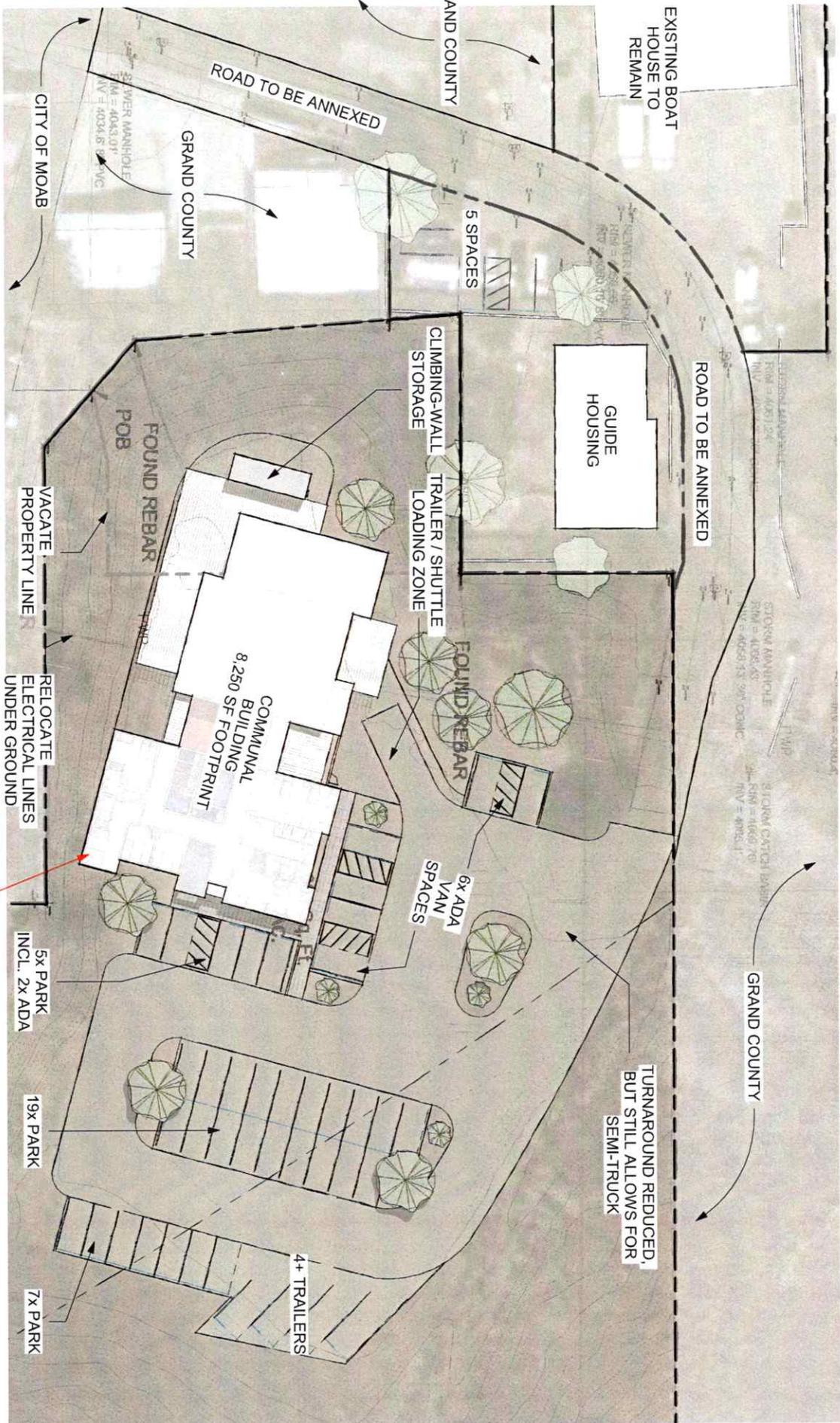
- Table 1. Minimum solar reflectance index value, by roof slope

	Slope	Initial SRI	OR	3-year aged SRI
Low-sloped roof	≤ 2:12	82		64
Steep-sloped roof	> 2:12	39		32

- Light Pollution Reduction: Existing MMC is functionally equal to or better than LEED.
- Outdoor Water Use Reduction: Existing MMC is functionally equal to or better than LEED.
- Recycling Infrastructure: Provide dedicated areas accessible to waste haulers and building occupants for the collection and storage of recyclable materials for the entire building. Collection and storage areas may be separate locations. Recyclable materials must include mixed paper, corrugated cardboard, glass, plastics, and metals.
- On-Site Solar Electric Generation: Use on-site renewable energy generation to provide 5% of the total site energy use.

#### **Building requirements**

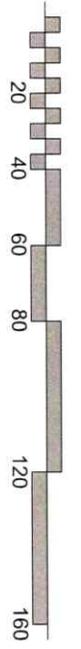
- Indoor Water Use Reduction: All newly installed toilets, urinals, private lavatory faucets, and showerheads that are eligible for labeling shall be WaterSense labeled. Applicable appliances shall be Energy Star or performance equivalent certified; commercial equipment to meet other defined standard.
- Interior Lighting:
  - Provide dimmable or multilevel lighting for 90% of all regularly occupied spaces.
  - Use light sources that have a Color Rendering Index (CRI) of at least 90.
- Thermal Comfort Control: Provide individual thermal comfort controls for at least 50% of individual occupant spaces. Provide group thermal comfort controls for all shared multioccupant spaces. Thermal comfort controls allow occupants, whether in individual spaces or shared multioccupant spaces, to adjust at least one of the following in their local environment: air temperature, radiant temperature, air speed, and humidity.
- Bird Safety Glazing: All exterior glazing to have bird safe glazing.



**1 SITE PLAN**  
1/32" = 1'-0"

**THIS CORNER OF THE BUILDING WILL EITHER REQUIRE A RETAINING WALL OR WE NEED TO REDUCE THE ALLOWANCE FOR SEMI TRUCK TURNAROUND IN FRONT OF THE BUILDING.**

**TOTAL PARKING:**  
41x PARKS + 1x LOADING ZONE, INCLUDES 8x ADA



SHEET NUMBER  
**AP10**

05/04/2024 11:33:54

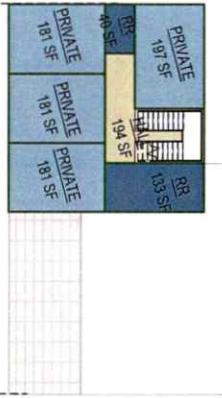
**NATIONAL ABILITY CENTER**

CERMAK STREET  
MOAB, UT 84532

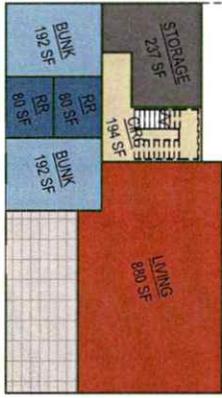
NOT FOR CONSTRUCTION

DATE:  
24.04.18  
PROGRAMMING DD





**3 GUIDES HOUSE L2**  
1" = 20'-0"



**2 GUIDE HOUSE L1**  
1" = 20'-0"



**1 PARTICIPANT SPACES**  
1" = 20'-0"

OPTION 2 AREA SCHEDULE

Level	Sort Order	Name	Area	Count
Option 2	- GUIDE	BUNK	384 SF	2
Option 2	- GUIDE	CIRC	194 SF	1
Option 2	- GU		1 SF	1
Option 2	- GU		237 SF	2
Option 2 L2	- GUIDE	HALL	194 SF	1
Option 2 L2	- GUIDE	PRIVATE	741 SF	4
Option 2 L2	- GUIDE	RR	173 SF	2
				2963 SF

TOTAL CAPACITY = 12 - 20

OPTION 2 AREA SCHEDULE

Level	Sort Order	Name	Area	Count
Option 2	COMMUNITY	COMMUNITY - REC	1536 SF	1
Option 2	COMMUNITY	HALL	174 SF	1
Option 2	COMMUNITY	LOUNGE	352 SF	1
Option 2	COMMUNITY	MTG. TRAINING	329 SF	1
Option 2	COMMUNITY	OFFICE	499 SF	2
Option 2	COMMUNITY	PUBLIC RR	135 SF	1
Option 2	COMMUNITY	RECEPTION	361 SF	1
Option 2	COMMUNITY	STORAGE	257 SF	1
COMMUNITY				3643 SF

Option 2	PARTICIPANT	BUNK	907 SF	2
Option 2	PARTICIPANT	DOUBLE	306 SF	2
Option 2	PARTICIPANT	FAMILY	770 SF	2
Option 2	PARTICIPANT	HALL	808 SF	1
Option 2	PARTICIPANT	KITCHEN	399 SF	1
Option 2	PARTICIPANT	LAUNDRY	285 SF	1
Option 2	PARTICIPANT	MUD ROOM	455 SF	1
Option 2	PARTICIPANT	RR	966 SF	2
Option 2	PARTICIPANT	STORAGE	305 SF	3
PARTICIPANT				5200 SF
Grand total				8,512 SF

MAX CAPACITY = 42 PARTICIPANTS

**NATIONAL ABILITY CENTER**

CERMAK STREET  
MOAB, UT 84532

NOT FOR CONSTRUCTION



301 S 400 E SUITE 100  
MOUNTAIN VIEW, UT 84003  
MFG/ARCH-SQUARED.COM  
DATE: 24.04.05  
PROGRAMMING DD

ARCHITECTURAL SQUARED

SHEET NUMBER  
**AP20**